

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SOFTWARE FREEDOM CONSERVANCY, INC. and ERIK ANDERSEN,	:
Plaintiffs,	:
-against-	: ECF CASE
BEST BUY CO., INC., SAMSUNG ELECTRONICS AMERICA, INC., WESTINGHOUSE DIGITAL ELECTRONICS, LLC, JVC AMERICAS CORPORATION, WESTERN DIGITAL TECHNOLOGIES, INC., ROBERT BOSCH LLC, PHOEBE MICRO, INC., HUMAX USA INC., COMTREND CORPORATION, DOBBS-STANFORD CORPORATION, VERSA TECHNOLOGY INC., ZYXEL COMMUNICATIONS INC., ASTAK INC., and GCI TECHNOLOGIES CORPORATION,	: DECLARATION OF BRADLEY M. KUHN
Defendants.	:
	X

I, Bradley M. Kuhn, pursuant to 28 U.S.C. 1746, declare as follows:

1. I am President of the Software Freedom Conservancy (“Conservancy”), one of the plaintiffs in this action. Until 30 September 2010, I was the Technology Director of the Software Freedom Law Center, which is counsel to plaintiffs in this matter. I offer this declaration in support of plaintiffs' motion to join Credit Managers Association of California (“CMA”) and Westinghouse Digital, LLC (“New Westinghouse”) as successors in interest of Defendant Westinghouse Digital Electronics, LLC (“Defendant”).

2. I hold a B.S. and M.S. in Computer Science, and have been a software freedom advocate since the early 1990's. I have extensive experience investigating the use of open source and Free Software by third parties.

3. Software that is intended to be installed into an electronic device is frequently referred to as "firmware." In connection with the Conservancy's ongoing involvement in this case, on September 22, 2010, I conducted an investigation to determine whether New Westinghouse was continuing to distribute the firmware for the TX-52F480S LCD HDTV.

4. As part of my investigation, I visited <http://www.westinghousedigital.com> and looked for the TX-52F480S product. The website linked me to <http://legacywd.com/firmware.aspx> when I looked for the model. From this site, I was able to download the file located at:
http://207.38.27.164/firmware/SW/SusanII_v1.6.3.rar which was identified as the firmware for the TX52F480S product. See attached Exhibit 1 (screen shot of Westinghouse webpage indicated Model Number TX-52F480S). This file has the same name and is in the same location as the file in my Declaration of June 3, 2010.

5. The ARIN WHOIS database (<http://ws.arin.net/whois>) identifies Defendant as the owner of the IP address 207.38.27.164 from which I downloaded the file. See attached Exhibit 2.

6. The Domaintools WHOIS database (<http://whois.domaintools.com/>) identifies <http://legacywd.com> to be registered by "Westinghouse" on May 26, 2010. The address provided for "Westinghouse" is 500 N. State College Blvd., #1300 Orange, California 92868. See attached Exhibit 3.

7. I analyzed the firmware file, and compared it to the file on which I performed the

analysis for my Declaration of June 3, 2010, and which contained binary versions of the BusyBox software. The files were identical.

8. When I downloaded the Westinghouse firmware, there was no corresponding source code or offer for corresponding source code for BusyBox provided therewith.

I declare under penalty of perjury that the forgoing is true and correct.



Bradley M. Kuhn

Executed on October 4, 2010
New York, New York